

# Terms and Conditions of Sale

- Scope:** These Terms and Conditions of Sale ("Terms") govern the sale of products ("Products") and the provision of Services (as defined below) by Alloy Enterprises, Inc. ("Alloy Enterprises") to the party listed on the purchase order or other order documentation ("Buyer"). Alloy Enterprises acceptance of Buyer's order is expressly conditioned on Buyer's acceptance of these terms and conditions. Any and all Buyer terms and conditions are hereby rejected and shall be of no effect. Buyer shall be conclusively deemed to have accepted these terms and conditions upon any of the following by Buyer, its agents or representatives: (i) written or electronic acknowledgement or acceptance of the Alloy Enterprises terms and conditions, (ii) transmission to Alloy Enterprises, its agents or representatives of any order for Alloy Enterprises Products or Services, or (iii) acceptance of or payment for any Product or Service covered hereby. Alloy Enterprises' failure to object to any provision contained in any communication from Buyer shall not be deemed a waiver of any provision hereof. Except to the extent Buyer has a written, signed, separate agreement with Alloy Enterprises governing the purchase and sale of Products and/or Services, these Terms supersede any previous communications, representations or agreements between the parties regarding the sale of Products and/or Services. Any changes from these Terms contained herein must be specifically agreed to in writing by an authorized representative of Alloy Enterprises before becoming binding on Alloy Enterprises.
- Prices:** All prices are invoiced in U.S. Dollars. All prices are subject to adjustment on account of specifications, quantities, shipment arrangements or other terms and conditions that are not a part of the original price quotation. Prices are exclusive of all federal, state, municipal or other government excise, value added tax, goods and services tax, sales, use, occupational or like taxes, tariffs, customs, duties and importing fees, the payment of which shall be the sole responsibility of Buyer regardless of whether invoiced to Buyer by Alloy Enterprises. Invoiced amounts are consequently subject to increase by the amount of any such tax, tariff, duty or fee that Alloy Enterprises pays or is required to pay or collect upon sale or delivery of the Products. Any certificate of exemption or similar document or proceeding required to exempt the sale of Products from sales or use tax liability shall be obtained by Buyer at its expense.
- Terms of Payment:** All payments shall be made in U.S. Dollars, unless otherwise agreed in writing. Terms are cash upon delivery, except where satisfactory open account credit is established, in which case terms of payment are net thirty (30) days from the date of invoice. Alloy Enterprises reserves the right at any time, in its sole discretion, to revoke any credit extended to Buyer. Alloy Enterprises will issue invoices on delivery in the case of all Products; and if deliveries are authorized in installments, each shipment shall be invoiced and paid when due without regard to other scheduled deliveries. Overdue payments shall be subject to finance charges computed at a periodic rate of 1.5% per month (18% per year) or the maximum amount allowable by law, whichever is less. Amounts owed by Buyer with respect to which there is no dispute shall be paid without set-off for any amounts that Buyer may claim are owed by Alloy Enterprises and regardless of any other controversies that may exist. Buyer does hereby grant to Alloy Enterprises a security interest in the Products and proceeds therefrom as security for the performance by Buyer of all its obligations hereunder. Payment shall be made for the Products without regard to whether Buyer has made or will make any inspection of the Products.
- Shipment:** Alloy Enterprises reserves the right to make shipments in installments. Alloy Enterprises reserves the right to make shipments when Product is available and shall invoice shipments as made. Alloy Enterprises reserves the right to allocate production and deliveries among its various customers under any circumstances. Alloy Enterprises will confirm in writing, and amend as appropriate, the shipment schedule. Under no circumstances shall Alloy Enterprises be liable to Buyer for any delay either in shipment or in delivery.
- Services:** Unless otherwise provided in a separate agreement between Alloy Enterprises and Buyer, where Alloy Enterprises provides services, in connection with the Products ("Services"), the manner and means used to perform the Services are at the sole discretion and control of Alloy Enterprises. All Services shall be performed at Alloy Enterprises' designated facilities unless otherwise mutually agreed in writing. Services will be provided on a time and materials basis at Alloy Enterprises' then current hourly rates or at such rates as the parties mutually agree in writing. Alloy Enterprises will invoice Buyer on or after the date of performance of the relevant Services.
- Ownership:** All title to all intellectual property rights in any designs or specifications provided by Buyer shall remain with the Buyer. All title to all intellectual property rights created by or on behalf of Alloy Enterprises relating to the process used by Alloy Enterprises in creating the Products or performing Services shall vest in Alloy Enterprises, including without limitation intellectual property rights created by Alloy Enterprises in the development and manufacture of custom Products and no transfer of title to, or license in favor of, Buyer of any intellectual property rights used by or on behalf of Alloy Enterprises in the provision of Services shall occur.
- Residuals:** Alloy Enterprises shall not be prohibited or enjoined from utilizing general knowledge, skills and experience, concepts, know-how and techniques retained in the unaided memory of an individual and acquired as a result of such individual's authorized access to Buyer's Confidential Information during the course of the performance of its obligations under these Terms provided that none of such retained general knowledge, skills and experience, concepts, know-how and techniques include any trade secrets of the other Party.

8. **Warranty:** Except as otherwise provided herein, Alloy Enterprises warrants to Buyer that for one (1) year from the date title to the Product passes from Alloy Enterprises (or its authorized distributors) directly to Buyer, each standard Product sold hereunder will be substantially free of defects in materials or workmanship and will conform to specifications set forth in Alloy Enterprises' published data sheets or, where applicable, user manuals for Alloy Enterprises' system products in effect at the time title passes. For Products that are non-standard Products of Alloy Enterprises, such custom-designed goods based on Buyer's specifications, Alloy Enterprises warrants to Buyer that such Products delivered hereunder will conform in all material respects to Buyer's specifications and be free of defects in material and faulty workmanship upon receipt by Buyer, and that any related services for such non-standard Products provided thereunder, will be of a professional quality conforming to generally accepted industry standards and practices for a period of three months from the date Services were rendered. Notwithstanding anything to the contrary, the warranty in this Section shall not apply to any Product identified as a pre-production version, prototype, sample, reference design, or similar designation or otherwise not having passed all stages of full production acceptance as solely determined by Alloy Enterprises, or to any Services, or to any products (or portion thereof) supplied or licensed by a third party (for which any warranty or services, if any, will be provided by the original manufacturer and not by Alloy Enterprises).

9. **Warranty Remedy:** Alloy Enterprises' sole liability and responsibility for Products under this warranty is for Alloy Enterprises to repair or replace any Product that is returned to it by Buyer or credit Buyer's account for such returned Product, provided that Alloy Enterprises shall have the right to reject any such remedy where Alloy Enterprises determines that the Warranty does not apply. Product returned to Alloy Enterprises for warranty service will be shipped to Alloy Enterprises at Buyer's expense and will be returned to Buyer at Alloy Enterprises' expense. Alloy Enterprises' obligation to honor its warranty for a Product is contingent upon receipt of payment in full for such Product.

10. **Warranty Disclaimer:** TO THE FULLEST EXTENT PERMITTED BY LAW AND EXCEPT AS OTHERWISE PROVIDED HEREIN, ALL PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND ALLOY ENTERPRISES EXPRESSLY EXCLUDES AND DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT. LABELING ON PRODUCTS AND PACKAGING IS INTENDED SOLELY FOR COMPLIANCE WITH APPLICABLE LAW AND ALLOY ENTERPRISES DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, THAT ARISE FROM SUCH LABELING OTHER THAN AS REQUIRED BY APPLICABLE LAW. IN NO EVENT SHALL ALLOY ENTERPRISES BE RESPONSIBLE UNDER ITS WARRANTY FOR ANY DEFECT THAT IS CAUSED BY NEGLIGENCE OF BUYER OR A THIRD PARTY, STATIC DISCHARGE, MISUSE OF A PRODUCT OR MISTREATMENT OF A PRODUCT. ALLOY ENTERPRISES SHALL HAVE NO RESPONSIBILITY FOR ANY PRODUCT THAT HAS BEEN ALTERED OR MODIFIED IN ANY WAY. ALLOY ENTERPRISES SHALL HAVE NO RESPONSIBILITY TO THE EXTENT ANY DEFECT OR FAILURE IS CAUSED BY NON COMPATIBILITY OF THE PRODUCTS WITH OTHER COMPONENTS USED BY BUYER. ALLOY ENTERPRISES SHALL HAVE NO RESPONSIBILITY FOR NONSTANDARD PRODUCTS, OR PRODUCTS PURCHASED OR ACQUIRED THROUGH UNAUTHORIZED CHANNELS. THE WARRANTY OF REPLACEMENT PRODUCTS SHALL TERMINATE WITH THE WARRANTY OF THE ORIGINAL PRODUCT.

11. **Buyer Warranty:** With respect to Products delivered hereunder, Buyer agrees to accept responsibility for (i) their selection to achieve Buyer's intended results, (ii) their use, (iii) the results obtained therefrom and (iv) the selection of, use of and results obtained from any equipment, programs or services not provided by Alloy Enterprises and used in connection with Products delivered hereunder. Buyer further warrants that it is buying for its own internal use and not for individual resale, unless otherwise agreed between Buyer and Alloy Enterprises under separate written agreement.

12. **No License:** Products or any parts thereof sold hereunder may be protected by intellectual property rights of Alloy Enterprises, including, but not limited to, rights under issued and pending patents, mask work rights, copyright rights, trademark rights and trade secret rights. Neither the sale of Products or any parts thereof hereunder nor the provision by Alloy Enterprises of any supporting or related documentation, technical information or advice shall confer on Buyer any license, express or implied, under any intellectual property rights of Alloy Enterprises covering or related to the process of their manufacture.

13. **Limitations of Liability:** IN NO EVENT SHALL ALLOY ENTERPRISES BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR OTHER INDIRECT DAMAGES, OR FOR LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF DATA, OR LOSS OF USE DAMAGES, DUE TO ANY CAUSE WHATSOEVER, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE, EVEN IF ALLOY ENTERPRISES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. NO SUIT OR ACTION SHALL BE BROUGHT AGAINST ALLOY ENTERPRISES MORE THAN ONE YEAR AFTER THE RELATED CAUSE OF ACTION HAS ACCRUED. FURTHER, THE TOTAL LIABILITY OF ALLOY ENTERPRISES TO BUYER AND/OR ANY OTHER PARTY FROM ANY AND ALL LAWSUITS, CLAIMS, OR ACTIONS, IN THE AGGREGATE, SHALL NOT EXCEED THE AGGREGATE AMOUNT ACTUALLY PAID BY BUYER TO ALLOY ENTERPRISES FOR THE SPECIFIC SERVICES PROVIDED OR PRODUCTS (AS IDENTIFIED BY PART NUMBER) SOLD UNDER THE ORDER SHIPMENT(S) AT ISSUE WITHIN THE PRIOR TWELVE (12) MONTHS THAT GAVE RISE TO THE LAWSUIT, CLAIM, OR ACTION. THE EXISTENCE OF MULTIPLE CLAIMS RELATED TO THE SAME PRODUCT AT ISSUE SHALL NOT ENLARGE OR EXTEND THIS LIMIT. ALLOY ENTERPRISES' EXPRESS

WARRANTY TO BUYER AND THE INTELLECTUAL PROPERTY INDEMNITY DESCRIBED HEREIN, WHICH ARE SOLELY FOR THE BENEFIT OF BUYER AND NO OTHER PARTY, CONSTITUTE ALLOY ENTERPRISES' SOLE LIABILITY AND THE BUYER'S SOLE REMEDY WITH RESPECT TO THE PRODUCTS, AND ARE IN LIEU OF ALL OTHER WARRANTIES, INDEMNITIES, LIABILITIES AND REMEDIES. UNLESS OTHERWISE EXPRESSLY PROVIDED IN A WRITING SIGNED BY BOTH PARTIES, ALLOY ENTERPRISES DOES NOT INDEMNIFY, NOR DOES IT HOLD BUYER HARMLESS, AGAINST ANY LIABILITIES, LOSSES, DAMAGES AND EXPENSES (INCLUDING ATTORNEY'S FEES) RELATING TO ANY CLAIMS WHATSOEVER, INCLUDING WITHOUT LIMITATION, CLAIMS FOR PERSONAL INJURIES, DEATH OR PROPERTY DAMAGE RELATING TO THE PRODUCTS SOLD HEREUNDER.

14. **Restrictions on Use:** Buyer agrees not to, directly or indirectly, modify, reverse engineer, decompile, disassemble or create any derivative works of any Products provided to Buyer.

15. **Assignment:** These terms and conditions are not assignable by Buyer without Alloy Enterprises' prior written consent and any unauthorized attempt to assign any rights, duties or obligations arising hereunder shall be void. Alloy Enterprises may, as it deems necessary, subcontract any part of the work or services to be provided pursuant to these terms and conditions. These terms and conditions shall be binding upon each party and their successors and permitted assigns.

16. **Governing Law:** Except as provided below, any and all matters in dispute between the parties, whether arising from or relating to these terms and conditions or arising from alleged extra-contractual facts including, without limitation, fraud, misrepresentation, negligence or any other alleged tort or violation of contract, shall be governed by, construed, and enforced in accordance with the laws of the State of Delaware.

17. **Force Majeure:** Alloy Enterprises shall not be liable for any loss or damage resulting from any delay in delivery or failure to give notice of delay when such delay is due to any cause or event beyond Alloy Enterprises' control, including, without limitation, acts of nature, pandemics, epidemics, unavailability of supplies or sources of energy, riots, wars, terrorist acts, sabotage, fires, strikes, rolling blackouts, labor difficulties, delays in transportation, delays in delivery or defaults by Alloy Enterprises' vendors, or acts or omissions of Buyer. In the event of delay due to any such cause, time for delivery shall be extended for a period of time equal to the duration of such delay and Buyer shall not be entitled to refuse delivery or otherwise be relieved of any obligations as a result of the delay. If, as a result of any such cause, any scheduled delivery is delayed for a period in excess of one-hundred-twenty (120) days, Alloy Enterprises shall have the right by written notice to Buyer to cancel the order for the Products subject to the delayed delivery without further liability of any kind.

## 18. General

a. **Compliance with Laws:** Buyer shall comply, and shall cause its employees to comply, with all applicable local, national, regional and international laws, ordinances, regulations, codes, standards, directives and international conventions and agreements to the extent that any of the foregoing have the force of law by being directly enforceable by a governmental authority, a court or other proper tribunal (collectively "Laws"), including but not limited to (i) anti-bribery and recordkeeping Laws, including but not limited to the U.S. Foreign Corrupt Practices Act ("FCPA"), the Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("OECD"), and the Inter-American Convention Against Corruption, (ii) environmental Laws, and (iii) import and export control Laws, including but not limited to the U.S. Export Administration Regulations (US EAR), the U.S. State Department's International Traffic in Arms Regulations (ITAR), sanction regimes of the U.S. Department of the Treasury Office of Foreign Assets Controls (OFAC), export laws and regulations of the European Union (EU) and/or any of its member states and export laws of other national governments. Buyer shall not, without prior U.S. Government authorization, export, re-export, or transfer any commodities, software or technology, either directly or indirectly, to any country subject to a U.S. trade embargo or sanction or to any resident or national of said countries, or to any person, organization, or entity on any of the sanctioned parties lists maintained by the U.S. Departments of State, the Treasury or Commerce. Buyer shall comply, and shall cause its employees to comply, with all applicable laws, ordinances and/or directives of countries in which they conduct business as they relate to the Universal Declaration of Human Rights, child labor laws, data privacy laws, criminal reporting laws, Environmental, Health and Safety laws or any similar laws, including, but not limited to identifying and filing or purchasing (as applicable) any and all required permits, certificates, licenses, insurance, approvals and inspections required in performance of its obligations hereunder. Buyer will indemnify and hold Seller harmless to the full extent of any loss, liability, damage, or expense, including but not limited to lost profits, fines, penalties, attorneys' fees, defense expenses and court costs, for any failure or alleged failure of Buyer, its officers, employees, agents, or subcontractors to comply with the requirements of this clause.

b. **Bankruptcy or Insolvency:** Alloy Enterprises reserves the right, by written notice of default, to cancel any order, without further obligation or liability to Buyer, on the occurrence of any of the following: (i) the insolvency of Buyer; (ii) the filing of a voluntary petition in bankruptcy by Buyer; (iii) the filing of an involuntary petition to have Buyer declared bankrupt; (iv) the appointment of a receiver or trustee for Buyer; (v) the execution by Buyer of an assignment for the benefit of creditors; (vi) the discontinuance of business by Buyer; or (vii) the sale by Buyer of the bulk of its assets other than in the usual course of business.

- c. Severability: Should any of these terms and conditions be held by a court of competent jurisdiction to be contrary to law, that term or condition will be modified as necessary to make it enforceable to the maximum extent permissible and the remaining terms and conditions will remain in full force and effect.
- d. No Agency: Alloy Enterprises and Buyer are independent contractors, and no agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended or created by these terms and conditions. Buyer is solely responsible for its employees and agents and shall indemnify Alloy Enterprises against any claim, liability, cost or damage related to Buyer's actions or those of its employees or agents, including, but not limited to, the making of unauthorized warranties or representations on behalf of Alloy Enterprises.
- e. Third Party Beneficiaries: Buyer represents and warrants that there exist no third-party beneficiaries to Buyer's rights hereunder.
- f. Basis of Bargain: THE PARTIES AGREE THAT THE WARRANTY DISCLAIMER, THE LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY PROVISIONS ARE MATERIAL, BARGAINED TERMS THAT ARE FUNDAMENTAL TO THESE TERMS AND CONDITIONS AND ARE REFLECTED IN THE CONSIDERATION TO BE GIVEN BY BOTH PARTIES UNDER THESE TERMS AND CONDITIONS AND IN THE DECISION BY BOTH PARTIES TO ACCEPT THESE TERMS AND CONDITIONS.
- g. Separate Transactions: Each shipment made hereunder shall be considered a separate transaction. In the event of any default by Buyer, Alloy Enterprises may decline to make further shipments. If Alloy Enterprises elects to continue making shipments, such action shall not constitute a waiver of any default by Buyer or in any way affect Alloy Enterprises' legal remedies for such default.
- h. Entire Agreements and Amendments: These terms and conditions constitute the entire agreement between the parties and supersede all previous communications, whether oral or written, with respect to the subject matter herein. Any change to these terms and conditions may be made only upon mutual agreement of the parties in writing.